



OFFICE OF THE DEPUTY COMMISSIONER - LEGAL MATTERS

LEGAL BUREAU BULLETIN

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- I. **SUBJECT:** VEHICLE SEARCHES
- II. **QUESTION:** When may officers search the passenger compartment of a vehicle incident to arrest of its occupants?
- III. **ANSWER:** Officers may only search the passenger compartment of a vehicle incident to arrest when they have a reasonable belief that (1) the arrestee might access the vehicle at the time of the search or (2) the vehicle contains evidence of the offense for which the occupant was arrested.

IV. DISCUSSION

A. Introduction

The purpose of this Bulletin is to advise Members of the Service on the law governing searches of the passenger compartment of a vehicle incident to the arrest of a passenger or passengers, including containers found therein. In sum, officers may search the passenger compartment of a vehicle, including containers found therein, incident to arrest only if it is reasonable to believe that: (1) the arrestee might access the vehicle at the time of the search or; (2) the vehicle contains evidence of the offense for which the occupant was arrested.¹ As a preliminary matter, note that this rule does not change officers' authority to search an entire vehicle, including the trunk and any closed containers found within, where officers have probable cause to believe the vehicle contains contraband or evidence of a crime.²

B. Facts

In Arizona v. Gant ("Gant"), the United States Supreme Court defined the lawful scope of a search of the passenger compartment of a vehicle incident to the arrest of a passenger or passengers.

¹ This rule derives from the United States Supreme Court's decision in Arizona v. Gant, 556 U.S. 332 (2009), the facts of which are discussed herein.

² This is known as the "automobile exception" to the warrant requirement. For a more detailed discussion of the "automobile exception," reference Legal Bureau Bulletin Volume 12, Number 3.

In Gant, two officers arrested the defendant for driving with a suspended license. The officers then called for backup. Two backup officers arrived and secured the suspect in the backseat of their vehicle.

After the defendant had been handcuffed and placed in the back of the patrol car, two officers then searched his vehicle. One officer recovered a gun, and the other officer recovered a bag of cocaine in the pocket of a jacket on the backseat.

The defendant was then charged with various drug related offenses. He moved to suppress the evidence seized during the search of his car on the ground that the warrantless search violated the Fourth Amendment.

The trial court denied the defendant's motion to suppress the evidence, and the appellate court reversed, finding that the search was unreasonable. The case was then appealed to the United States Supreme Court, which held that the warrantless search of the defendant's vehicle violated the Fourth Amendment.

C. Holding

In holding that the search of the defendant's vehicle violated the Fourth Amendment, the United States Supreme Court defined the permissible scope of a warrantless search of vehicles incident to arrest of the occupants. Specifically, the Court held that police may search the passenger compartment of a vehicle, including containers found therein, incident to arrest only if it is reasonable to believe that:

- (1) The arrestee might access the vehicle at the time of the search or;
- (2) The vehicle contains evidence of the offense for which the occupant was arrested.

In Gant, the Court held that neither of the above requirements was met. First, officers did not have a reasonable belief that the defendant might access the vehicle at the time of the search. The defendant was not within reaching distance of his car at the time of the search. Rather, he was handcuffed and secured in a patrol car at the time of the search. Further, the defendant was clearly outnumbered by the police. Second, officers did not have a reasonable belief that the defendant's car contained evidence of the offense of the arrest. Officers arrested the defendant for a suspended license – an offense for which officers could not reasonably expect to find evidence in the passenger compartment of the defendant's car. Thus, the officers' search of the passenger compartment of defendant's car violated the Fourth Amendment.

D. Application of Gant in New York State Cases

In the following cases, New York courts held that officers were justified in searching the passenger compartment of a vehicle. In these cases, unlike in Gant, officers either had a reasonable belief that the vehicle (1) contained evidence of the crime for which the occupant was arrested, or (2) that the passenger might gain access to the vehicle:

- Shortly after committing a robbery, the defendant fled from the scene by car. Officers apprehended the defendant following a police chase and placed him under arrest. The court held that the search of defendant's vehicle incident to arrest was valid because it was reasonable for the officers to believe that evidence of the robbery might be found within the passenger compartment.³
- Officers lawfully stopped a vehicle in which defendant was a passenger. Prior to pulling over the vehicle, officers observed another passenger in the backseat looking back at the officer and attempting to stuff something under the seat. The passengers' movements after the officer ordered them out of the vehicle caused the officer to reasonably fear for his safety. Thus, the officer conducted a frisk of his person, which revealed two firearms. The officer then arrested the defendant and conducted a search incident to arrest of the vehicle, which revealed additional firearms and ammunition. The court explained that the codefendant's attempt to hide something under the seat provided the officer a reason to believe that the vehicle contained additional evidence of the firearms offenses for which the defendant was arrested. Therefore, the search was justified.⁴

E. Impact of the Decision on the New York City Police Department

In light of Gant, officers may only search the passenger compartment of an individual's vehicle incident to arrest in the following circumstances:

- (1) When officers have a reasonable belief that the arrestee might access the vehicle at the time of the search or;
- (2) When officers have a reasonable belief that the vehicle contains evidence of the offense for which the occupant was arrested.

It should be noted that, as in the case of all searches incident to arrest, a search of the passenger compartment of an arrestee's vehicle incident to arrest must be performed contemporaneously with the arrest. In other words, the search must closely follow the arrest. Thus, in People v. Tashbaeva, the court held that officers' search of a vehicle violated the Fourth Amendment even where officers had a reasonable belief that it contained evidence of the crime for which the defendant was arrested because officers waited until the day after the arrest to search the vehicle.⁵

Members of the Service are also advised that this decision does not change officer's authority to search a vehicle when they have probable cause to believe the vehicle contains contraband, evidence of the crime, a weapon or some means of escape. Officers who have probable cause to search a vehicle may search the entire vehicle, including the trunk and any closed

³ People v. Daniels, 68 A.D.3d 1711 (4th Dep't 2009).

⁴ People v. White, 113 A.D.3d 532 (1st Dep't 2014).

⁵ 35 Misc. 3d 812 (N.Y. Crim. Ct. 2012).

containers found within the vehicle. Officers may conduct a search of a vehicle pursuant to probable cause even if the occupants have been removed and taken into custody.

V. CONCLUSION

Officers conducting a search incident to arrest of the passenger compartment of a vehicle, including closed containers found therein, must be able to articulate that they either (1) had a reasonable belief that the arrestee might access the vehicle at the time of the search **or**; (2) had a reasonable belief that the vehicle contains evidence of the offense for which the occupant was arrested.

Members of the Service are encouraged to call the Legal Bureau at (646) 610-5400 with questions about the principles discussed herein.

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